Supreme Court of the United States.

No. 32.—October Term, 1877.

The Northwestern Fertilizing Company, Appellant,

vs.

The Village of Hyde Park, and C. M. Cady, E. G. Clark, H. Vanderbilt, W. E. Hale, L. G. Fisher, and L. Bradner, Jr., Trustees of said Village.

ARGUMENT FOR THE APPELLEES.

HITCHCOCK & DUPEE,

Solicitors for Appellees.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

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May it please your Honors:

The record in this case discloses a state of facts about which there is no substantial controversy.

In 1864, Wahl Bros. & Lighthall began the manufacture of an agricultural fertilizer from the waste animal matter furnished by the slaughter and packing houses of Chicago. The process consisted in spreading the material, as it came from the tanks, upon the open ground, and there exposing it to the sun and air until it was dry. Their establishment was within the corporate limits and about four miles from the court-house. They created and maintained a most offensive nuisance until the fall of 1866, when they transferred the business to Ainsworth, a station on the Pittsburg, Ft. Wayne & Chicago Railway, and within the present limits of the village of Hyde Park. This station is near the mouth

of the Calumet river, and about thirteen miles from the centre of the population of the city. At that time the country about Ainsworth was swampy and nearly uninhabited. It gave little promise of future improvement. The firm continued the process as before, until July, 1868, when they sold to Baugh & Sons, of Philadelphia.

They had previously, on the 8th of March, 1867, obtained a charter under which they proposed to carry on the business. Shortly before the sale to Baugh & Sons, Louis Wahl, with a party of friends, visited the town of Lake, in Indiana, which is situated about twenty miles from Ainsworth station, across an arm of Lake Michigan. Although water is the best absorbent of putrid gases known to science, the odor was very offensive at that place. He thought it time to sell out, and for the reasons which induced him to take this course, Baugh & Sons organized the Northwestern Fertilizing Company. The charter of that company contains the following provisions:

"SEC. 4. Said corporation is hereby authorized and empowered to establish and maintain *chemical and other works* at the place designated herein, for the purpose of manufacturing and converting dead animals and other animal matter into an agricultural fertilizer, and into other chemical products, by means of *chemical*, mechanical, and *other processes*.

"SEC. 5. Said *chemical* works shall be established in Cook county, Illinois, at any point south of the dividing line between townships thirty-seven and thirty-eight. Said corporation may establish and maintain depots in the city of Chicago, in said county, for the purpose of receiving and carrying off from and out of the said city any and all offal, dead animals, and other animal matter, which they may buy or own, or which may be delivered to them by the city authorities and other persons."

The extent of the powers of the corporation is the material question of law in this case. A new process of man-

ufacture was introduced. A large revolving cylinder, containing a revolving shaft with stirrers, was subjected to a gentle heat. The animal matter was placed within, and the gaseous and watery vapors driven into the atmosphere. The process continues the same at the present time. It creates a most offensive nuisance in the neighborhood.

Physicians testify that the odors from the factory are deleterious to human health and life. The inhabitants for miles around are compelled at times to close the windows of their dwellings to escape nausea.

The company receives substantially all the offal and refuse of the packing-houses during the winter, and it lies rotting until the following summer, and is not reduced before August or September.

This company has conducted its business in this way for five years, under a claim of exemption by charter from the operation of the police powers of the village of Hyde Park. In the meantime the character of the surrounding country has entirely changed. Congress has appropriated large sums for dredging and otherwise improving the Calumet river, and the stage of water has been reduced from sixteen to twenty inches, drains have been opened along the streets and railways, and the surface of the land is free from swamp and slough. Good roads have been constructed, churches, schools, factories, and villages have sprung up within the immediate neighborhood, and parks and boulevards have been purchased and improved by the public at a cost of several millions of dollars, within the direct influence of this most offensive establishment.

In 1867, the charter of the town of Hyde Park was granted. It contained a section, to be found on the 177th page of the record, exempting this establishment from the police power of the town. It was obviously inserted at the suggestion of parties in interest, but it does not purport to be a grant of power, and it will not be claimed that it is a contract be-

tween the state and the Northwestern Fertilizing Company, as that company was not chartered until three days afterwards. In 1869, the charter was amended, and ample sanitary and police powers conferred upon the municipal authorities, with a proviso, however, that they should not be exercised against the Northwestern Fertilizing Company until the expiration of two years after the passage of the act. The proviso may be found on the 103rd page of the record.

It was obviously inserted as a compromise between the public authorities and the corporation. The town of Hyde Park afterwards organized as a village under the general law of 1871. It adopted ordinances intended to abate the nuisance maintained by the complainant. They are as follows:

"SEC. 2. All places or premises within the village of Hyde Park, kept, occupied, or used for the purposes of steaming, boiling, or rendering in any manner of any offal, tainted or damaged lard or tallow, or the steaming or rendering of any animal substances, when the same may be kept, occupied, or used in such manner as to occasion any offensive smell, or to so taint the air as to render it unwholesome or offensive to the smell, and all places where any nauseous, offensive, or unwholesome business may be carried on, are hereby severally declared to be nuisances. And any person or persons who shall own, keep, occupy, or use such place or premises in such manner as to occasion any offensive smell, or to so taint the air as to render it unwholesome or offensive to the smell, shall, on conviction, be subject to a fine of not less than fifty dollars nor more than two hundred dollars in every case, and to a like fine for every day he, she, or they shall continue or suffer such nuisance to continue after the first conviction, or after being notified by any officer or policeman of the village of Hyde Park to abate the same.

"SEC. 3. Any person or persons who shall own, use, or occupy any packing-house, rendering establishment, tallow

chandlery, bone factory, soap factory, or tannery, who shall cause or suffer any offal, filth, refuse, foul or nauseous liquor or other offensive matter to be discharged out of, or flow from, any such premises, into Lake Michigan, or into any lake lying in whole or in part within the village of Hyde Park, or the Calumet river, or either of the branches thereof, or any of the slips or canals connected therewith, or into any slough within the jurisdiction of the said village, or in or upon any street, alley, public square, vacant lot, wharf, dock, river bank, or lake shore, shall be subject to a fine not less than twenty-five dollars, and not exceeding two hundred dollars, for each offence.

"SEC. 4. Any person or persons who shall permit or suffer any offal, filth, refuse, animal or vegetable matter, which is liable to become putrid or offensive, or injurious to health, to remain on any premises, used or occupied by him, for a longer period than four hours at any one time, shall be subject to a fine of not less than three dollars, and not more than two hundred dollars, and to a further fine of ten dollars for each day the same shall be allowed to remain after a conviction for the first offence.

"SEC. 5. The owner or owners of any grocery, cellar, soap or tallow chandlery, tannery, stable, pig-sty, privy, or sewer, found to be in a filthy, nauseous, offensive, or unwholesome condition, or any other unwholesome or nauseous house or place, shall immediately cleanse, abate, or remove the same upon being notified so to do by any officer or policeman of the village of Hyde Park; any such owner or owners, who shall fail or refuse to comply with such notice, shall be subject to a fine of not less than three dollars, nor more than fifty dollars, for each and every day he, she, or they shall so fail or refuse to cleanse, abate, or remove the same.

"SEC. 6. All buildings, yards, grounds, premises, and places of any and all description in the village of Hyde Park, kept or suffered to be in a foul, offensive, nauseous,

or filthy condition, are hereby declared to be nuisances, and any person who shall own or keep, or use any of such places so declared to be nuisances, shall be deemed the author of a nuisance, and, on conviction thereof, shall be subject to a fine not exceeding two hundred dollars, and not less than five dollars in every case, and to like fine for every day he, she, or they shall fail or refuse to abate such nuisance when notified by an officer or policeman of the village of Hyde Park to abate the same.

"SEC. 7. No person shall transport, carry, haul, or convey any offal, dead animals, or other offensive or unwholesome matter or material into or through the village of Hyde Park; any person who shall be in charge of or employed upon any train or team carrying or conveying such matter or material into or through the village of Hyde Park, shall be subject to a fine of not less than five dollars, nor more than fifty dollars, for each offence.

"SEC. 8. No person shall establish, maintain, or carry on any offensive or unwholesome business or establishment within the limits of the village of Hyde Park, nor within one mile of the limits thereof. Any person who shall violate any of the provisions of this section shall be subject to a penalty of not less than fifty dollars, nor more than two hundred dollars, for each and every offence, and to a like fine for each day such business or establishment shall be continued after the first conviction.

"SEC. 9. The depositing of any night-soil, dead animals, manure, or other filthy, offensive, or nauseous substances, upon any lot, street, alley, highway, or other place in the village, is hereby declared to be a nuisance, and any person convicted thereof shall be fined not less than three dollars, nor exceeding twenty dollars.

"SEC. 10. Whenever any nuisance shall be found on any premises within the village, contrary to any ordinance of said village, the president of the board of trustees is here-

by authorized, in his discretion, to cause the same to be summarily abated in such manner as he may direct."

(Record, pages 99, 100, 101, 102.)

They are prohibitory of the business carried on by the complainant, and raise fairly the quesion of the power of a municipal body, acting under the authority of the state, to abate a chartered nuisance. A series of prosecutions at law were instituted by the police force of the village of Hyde Park, and this bill was filed to enjoin them. An injunction was ordered, and the court declined, upon answer and affidavits, to dissolve it. Pending the suit, the village of Hyde Park passed the following ordinances:

(Record, pages 104, 105, 106.)

"*Ordained*, By the president and board of trustees of the village of Hyde Park, as follows, to wit:

"SEC. 11. All establishments, places, or premises within the village of Hyde Park so negligently conducted, managed, or used as to create such offensive smells as to taint the air and render it unwholesome or disagreeable to the public or to the inhabitants of said village, are hereby severally declared to be a nuisance, and every person or corporation who shall create, or aid or assist in creating such nuisance, shall be liable to a fine of not less than fifty dollars and not exceeding two hundred dollars, and to a like fine for each twenty-four hours such nuisance shall be continued and remain unabated.

"SEC. 12. Any person or corporation engaged in the business of converting dead animals or other animal matter into an agricultural fertilizer or into other products within the limits of said village of Hyde Park, and who or which shall so negligently conduct, or manage, or aid, or assist in so managing or conducting such business as to create such nuisance as is described in section 11 of this ordinance, shall be liable to a fine of not less than fifty and not exceeding two hundred dollars, and to a like fine for each twenty-

four hours such business shall be in such manner continued by the procurement, aid, or assistance of such person or corporation.

"SEC. 13. No person or persons, or corporation engaged in rendering, reducing, or manufacturing animal matter or offal into an agricultural fertilizer or other product, shall accumulate at any one place within the jurisdiction of said village, animal matter or offal exceeding one hundred tons, or of blood exceeding 1,000 gallons. Any person or corporation who or which shall violate this section shall be deemed guilty of maintaining a nuisance, and upon conviction thereof shall be fined in a sum not less than fifty and not more than two hundred dollars.

"SEC. 14. Any person or persons who, or corporation which shall cause animal matter or offal to be brought into the village of Hyde Park for the purpose of manufacturing the same into a fertilizer or other product, or who shall aid or assist therein, shall transport the same in close, tight, and covered cars or boxes, and shall deposit the same in close, tight, and covered bins so that no offensive or unwholesome odor shall escape therefrom. Any person who shall violate this section shall be subject to a fine of not less than fifty and not more than two hundred dollars for each offence.

"SEC. 15. Any person or persons, or corporations engaged in rendering, reducing, or manufacturing animal matter or offal into a fertilizer or other product, who or which shall deposit within the limits of Hyde Park any such matter or offal in a putrid or offensive condition, or who or which shall aid or assist therein, shall be deemed guilty of creating a nuisance, and upon conviction thereof shall be fined in a sum not less than fifty dollars and not more than two hundred dollars.

"SEC. 16. Any person or persons, or corporation engaged in rendering, reducing, or manufacturing animal matter or offal into a fertilizer or other product, who or which shall

permit or suffer any animal matter or offal to remain on premises occupied or used by him, or them, or it, within the limits of the village of Hyde Park for a longer period than forty-eight hours before the actual reduction or manufacture thereof, shall be deemed guilty of maintaining a nuisance, and on conviction thereof shall be subject to a fine of not less than fifty dollars and not exceeding two hundred dollars, and to a like fine for every day he, she, or they shall fail to abate such nuisance.

"SEC. 17. Every person or corporation engaged in manufacturing animal matter or offal into a fertilizer or other product, within the limits of the village of Hyde Park, shall, before the reduction thereof, thoroughly deodorize the same by the application of salt, acid, or other chemicals, so that the same shall not be offensive. Any person who shall violate this section of the ordinance shall be subject to a fine of not less than fifty dollars and not more than two hundred dollars.

"SEC. 18. Any person or corporation who or which shall operate or use, or be employed in any factory or other place for the reduction, rendering, or manufacturing of animal matter or offal into a fertilizer or other product, between the first day of April and the first day of November, within the limits of the village of Hyde Park, shall be deemed guilty of maintaining a nuisance, and on conviction thereof shall be subject to a fine of not less than fifty dollars and not more than two hundred dollars, and to a like fine for every day he, she, or they shall fail to abate such nuisance.

"SEC. 19. Nothing contained in this ordinance shall be construed so as to repeal any existing ordinance of the village of Hyde Park relating to nuisances or the abatement thereof."

They are not prohibitions, but regulations. They raise fairly the question, whether stringent but reasonable regulations can be applied to this corporation.

Upon final hearing, the court dismissed the bill for want of equity.

With the foregoing statement of the case we proceed to the discussion of the questions of law involved in the case.

I.

The extent of the powers of the corporation derived from its charter.

Upon this question we wish to make ourselves clearly understood.

The complainant's charter secured to it immunity from public prosecution for any act authorized by it, *so long as such authority continued.* The legislature may exempt from the operation of the criminal laws, an act injurious to the health and endangering the lives of the community. So long as such exemption exists, the act is *lawful*, although an individual sustaining special injury may have his civil remedy. We do, however, insist—

1st. That when the legislature creates such exemption by law, general or special, public or private, it may, in its discretion, repeal such law.

2nd. An act in itself a nuisance, but expressly exempt from the operation of the general laws governing nuisances, must, notwithstanding, be performed in a careful, prudent and skillful manner, so as to create no unnecessary offence, or it becomes subject to public prosecution.

3rd. By a proper construction of the charter of the Northwestern Fertilizing Company, its powers are subject to the implied proviso that they shall be so exercised as not to create a nuisance or to violate the general laws of the land.

We have so fully argued the first proposition in the case of the *Town of Lake View* v. *The Rose Hill Cemetery Company*, now pending in this court, that we shall limit its discussion here. It is not necessary for us to maintain, in this case, the broad proposition that the state may not in some cases, by contract, impose a limitation upon the exercise of the police power. An obstruction to a public highway by railway or bridge, which is a nuisance at common law, may be authorized by charter so as to restrain the future exercise of the power of abatement; to this extent, the authorities have gone, and no further. They are fully cited in the brief of the appellant. We claim only, that the state cannot impose upon itself by contract, a limitation upon the exercise of the police power which involves the abandonment of its duty to protect the health and lives of the community.

A contract for such a limitation is not protected by that clause of the Constitution of the United States forbidding any law impairing the obligation of contracts.

The second proposition, we understand, was maintained by the Recorder's Court of Chicago in the criminal proceedings referred to in the bill.—(Vide 23rd page of Record.)

Its correctness is conceded on the 55th page of the argument filed by appellant. The concession is important, in view of the ordinances of Hyde Park, passed since the filing of the bill, and designed to *regulate* and not to *abate* the business maintained by the appellant.

The third proposition is but a statement of the well-known rule, that a corporation can take nothing as against the public by implication—or in other words, it is subject to the general laws of the land, in the absence of express language of exemption.

The testimony of the experts in this case shows conclusively that the business authorized by the charter of the

complainant *can* be conducted so as not to be offensive. It is but a question of cost of chemical and mechanical appliances.

II.

To what extent has the state resumed its police power over the Northwestern Fertilizing Company?

That "a repeal by implication is not favored," that "the repugnance between statutes must be clear," to justify a resort to this doctrine, and that "a subsequent statute which is general does not abrogate a former statute which is particular," are maxims of the law not to be questioned. Nevertheless, they are but rules of construction, not framed for universal application, but designed to ascertain the intent of the legislature in any given instance. Judge Treat, in the case of *Town of Ottawa* v. *County of La Salle*, 12 Ill., 339, with his usual accuracy, lays down the rule in the following language:

"The earliest statute continues in force, unless the two are clearly inconsistent with, and repugnant to each other, *or, unless in the latest statute, some express notice is taken of the former, plainly indicating an intention to repeal it.*"

A reference to all acts in *pari materia*, will make the legislative intent to resume police powers over the establishment of the Northwestern Fertilizing Company absolutely certain.

On the 5th of March, 1867, (not ~~1857~~, as erroneously stated in the Record,) an act was approved containing the following provisions:

"SEC. 11. The said board (the board of trustees) shall have, subject to the provisions of this act, the general management and control of the finances and all the property,

real, personal, and mixed, of the town, and shall likewise have power, within the territory aforesaid, by ordinance, regulation, or by law,

* * * * * *

"*Eighth.* To compel the owner or occupant of any grocery or cellar, tallow-chandler shop, soap factory, tannery, or other unwholesome, nauseous house or places, to cleanse or remove or abate the same, from time to time, as often as may be necessary for the health, comfort, and convenience of the inhabitants of said town.

* * * * * *

"*Fifteenth.* To determine and abate all nuisances, which are or may be injurious to the public health, in any manner they may deem expedient.

"SEC. 31. Nothing in this act shall be so construed as in any manner to authorize or empower the trustees of said town, or its officers or agents, to prohibit, interfere with, obstruct, or hinder such parties, their successors or assigns, as are now engaged in the business of conveying from the city of Chicago to any point south of the town line between townships thirty-seven (37) and thirty-eight (38) north, ranges fourteen (14) and fifteen (15) east of the 3d P. M., offal or any other animal matter, and the manufacture of the same into an agricultural fertilizer or other chemical product, or the rendering and straining of any such animal matter south of said line by the parties aforesaid."

At the time of the passage of this act, Wahl Bros. & Lighthall were carrying on the business referred to in the 31st section at the place now occupied by the Northwestern Fertilizing Co. At the same time the charter of that company was in the "omnibus," and on its way through the legislature. It was approved three days thereafter, on the 8th of March, 1867. That the attention of persons *outside* of the legislature was at that time directed to this specific nuisance can admit of no doubt. By a legal fiction this

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"*Eighth.* To compel the owner or occupant of any grocery or cellar, tallow-chandler shop, soap factory, tannery, or other unwholesome, nauseous house or places, to cleanse or remove or abate the same, from time to time, as often as may be necessary for the health, comfort, and convenience of the inhabitants of said town.

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court is bound conclusively to presume that the legislature also was acquainted with the contents of the 31st section.

On the 26th of March, 1869, the charter of the town of Hyde Park was revised, and the following powers conferred upon the trustees. (Pages 102–3 of Record.) "*Eighth.* To compel the owner or occupant of any grocery or cellar, tallow-chandler shop, soap factory, tannery, or other unwholesome or nauseous houses or places, to cleanse or remove or abate the same, from time to time, as often as may be necessary for the health, convenience, and comfort of the inhabitants of said town."

"*Fifteenth.* To define and abate nuisances which are or may be injurious to the public health, in any manner they may deem expedient.

"*Sixteenth.* To regulate, restrain, prohibit or license breweries, tanneries, packing-houses, butcher shops, stock-yards, or the establishments for the steaming or rendering of lard, tallow, offal, manure, or such other substances as may be rendered, boiled or steamed, and all establishments or places where any nauseous, offensive, unwholesome or immoral business may be carried on: *Provided, however, that the sanitary and police powers conferred by this act shall not be exercised by said board of trustees as against the Northwestern Fertilizing Company, or the Union Rendering Company, located at or near the Calumet river, in said town, until the full expiration of two years from and after the passage of this act.*"

The proviso to the 16th section contains an express notice of the Northwestern Fertilizing Company, and plainly indicates an intention to subject it to the police power in two years after the passage of the act.

The history of this proviso is stated in the testimony of Mr. Sherman, on the 149th page of the record. The citizens of the town desired general police powers over the Northwestern Fertilizing Company. Mr. Ralston, the sec-

retary of the company, was at Springfield to oppose the revision of the charter of the town; a compromise was effected and the proviso inserted.

One answer that is made to the argument based on this proviso is, that "the particular legislature which passed this law did not comprehend the immunity which its charter gave to the Northwestern Fertilizing Company."—(Vide page 33 of the argument.)

As we understand the argument, it is, that as the legislature intended a benefit, it would be a sort of judicial fraud on that body to give such effect to the proviso as will work an injury. In other words, it is urged that there is a legal presumption that "the particular legislature" which passed this law intended to promote private interests and not the public welfare, and that it was too ignorant to use proper language to accomplish its purpose.

This court is, therefore, called upon to apply the principle of the case of *Tyson* v. *Postlethwaite*, 13 Ill., 727, and strike out the proviso, so that the law may conform to the real purpose of the legislature.

The proviso is the obvious language of compromise between public pressure and private influence, and we have no doubt this court will gladly give it full effect in the interest of the community.

Another argument urged in answer to this troublesome proviso is, that it should be construed so as to limit the police power of the town to regulations of such a nature as to prevent negligence, but not essentially interfere with the business of the complainant.

The powers conferred, however, upon the town are, in express words, powers to *abate* and not merely powers to regulate, and, therefore, give no room for construction.

It is settled by authority in this state, that a general law will operate as a repeal of a special or particular law, in a

case of repugnancy not more apparent than in the case under discussion.

Dingman v. *The People*, 51 Ill., 278.

III.

The town of Hyde Park has exercised the power delegated to it of taking from the Northwestern Fertilizing Company its immunity from public prosecution.

We have argued, and suppose the court will not doubt, that the legislature has clearly expressed its intention that the town should exercise its police powers over the establishment of the complainant.

The municipal intent is also apparent. The language of the ordinances is, No person shall transport, etc.; all places or premises used for the purpose of rendering any animal substances, etc.; any person or persons who shall occupy, etc.—(Vide 100th page of Abstract.)

In Dingman's case, heretofore cited, a general ordinance of the city of Chicago relating to licenses, was held to repeal a section of the charter of the Chicago University.

IV.

The ordinances are said to be unreasonable, and therefore void.

Only one section of several is cited as unreasonable, viz., that prohibiting the transportation of offal into or through the village of Hyde Park. Waiving all discussion as to whether this particular provision is or is not reasonable, it is enough that the different sections of the ordinance contain distinct and several rules or by-laws not in their nature entire. The rule is, that "if the by-law consist of several distinct and independent parts, although one or more of

them may be void, the rest are equally valid as if the void clauses had been omitted; for where it consists of several particulars it is to all purposes as several by-laws, though the provisions are thrown together under the form of one."

Angell and Ames on Corporations, § 358.

Even if it were demonstrably shown that this particular provision was so unreasonable as to be void, this court will not reverse the decree that it may be declared void, but leave the complainant to try the question at law.

V.

Cooley's Cons. Limit. is cited to support the following proposition:

Police regulations "must not be in conflict with any of the provisions of the charter of the corporation, and must not, under pretence of regulation, take from the corporation any of the essential rights and privileges which the charter confers. They must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise."

(Vide p. 51, appellant's argument.)

In another case argued at this term we had occasion to analyze the cases cited to support this rule as stated by Judge Cooley, and succeeded in showing that no one of them involved the case of a franchise to destroy life and health, and we still insist that the proposition is too broadly stated, and that the essential franchises of a corporation may be destroyed, if it be within the fair range of police regulations necessary, to promote the health of the public.

The right thus to protect the community against a chartered nuisance is denied by the complainant, and it is said that the state can only exercise the right of eminent domain, and condemn the franchises of the corporation. The answer to this suggestion is two-fold:

First. It is a solecism to talk of taking a nuisance for public use. The public do not need the franchises of the Northwestern Fertilizing Co. It is their destruction and not their use that is desired.

Second. To create a nuisance, and then tax or assess the individual for its abatement, would seem to be a most ingenious as well as effective device for taking property, under the form of taxation, without compensation therefor.

In conclusion, we may repeat that we do not insist that *some* limitations may not be imposed by a charter upon the legislative power. It may be that the legislature may by contract with a railway company abrogate irrevocably the common-law rule, that carriers shall transport for a reasonable compensation, or that the power of taxation may be substantially restrained under the forms of commutation, and that permanent obstructions by bridges and railways may be authorized upon navigable streams and highways, and that these restraints and limitations become perpetual by the principles of the Dartmouth College case, but there is as yet no authority to support the position that a legislature may limit or abandon its power to pass all laws needful to protect the lives and the health of the community. It is to be hoped that no such precedent will be made by this court.

The citizen has a natural right to pure air and water, and although the state may take away all remedy, it cannot, by grant, confer the permanent right to pollute them, and thus abandon a most important function of government.

Respectfully submitted.

HITCHCOCK & DUPEE,
Solicitors for Appellees.

CHAS. HITCHCOCK,
Of Counsel.